82-556

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No. ..-....

IN THE

Supreme Court of the United States

October Term, 1982

PRESS-ENTERPRISE COMPANY, a California corporation,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

ALBERT GREENWOOD BROWN, JR.,
Defendant.

Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

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Questions Presented.

The PRESS-ENTERPRISE COMPANY respectfully petitions that a Writ of Certiorari issue to review the Order of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, entered in this proceeding on May 13, 1982.

1. Is the exclusion of the public from the *voir dire* proceedings in capital cases in direct violation of the public's rights guaranteed under the United States Constitution First Amendment as interpreted by this Court in *Richmond Newspapers Inc. v. Virginia*, (1980) 448 U.S. 555; 65 L.Ed.2d 973; 100 S.Ct. 2814?

2. Has the application of the California Supreme Court decision of *Hovey v. Superior Court*, (1980) 28 Cal.3d 1; 168 Cal.Rptr. 128; 616 P.2d 1301, deprived the public of the right to attend criminal trials as guaranteed by the First Amendment of the United States Constitution extended through the Fourteenth Amendment to the citizens of every state?

3. Has the application of the California Supreme Court decision of *Hovey v. Superior Court*, (1980) 28 Cal.3d 1; 168 Cal.Rptr. 128; 616 P.2d 1301, and its application by the lower courts deprived the public of the right to attend criminal trials as guaranteed by the due process clause of the Fourteenth Amendment of the United States Constitution?[1]

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[1]The parties to this action are: PRESS-ENTERPRISE COMPANY, SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE.

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Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

Orders Below.

The Order of the Court of Appeal of the State of California was not reported, and appears in the Appendix hereto (see Appendix, page 1). The Order of the Supreme Court of the State of California denying hearing is not reported.

Jurisdiction.

The Order of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, was entered on May 13, 1982. The Order of the Supreme Court of the State of California denying Petitioner's Petition for Hearing was entered on June 30, 1982. Under 28 U.S.C. Section 1257(3), this Court's jurisdiction is invoked.

Constitutional Provisions Involved.

United States Constitution, Amendment 1:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment 6:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

United States Constitution, Amendment 14, Section 1:

> ". . . nor shall any state deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case.

At issue in this case is a conflict between the public's First Amendment right to have access to criminal trials and the Defendant's Sixth Amendment right to a fair trial. Spe-

cifically, Petitioner was denied its right to attend and observe the *voir dire* proceedings and further was denied access to the transcripts of these proceedings. This issue was brought before the Court last term in another California capital case, in which the trial court closed the entire *voir dire* proceedings. The petition to this Court was denied.[1]

The record before the lower court was through a verified petition of counsel containing the following pertinent facts:

1. Petitioner, PRESS-ENTERPRISE COMPANY, is a California corporation, and publishes two newspapers of general circulation, THE MORNING PRESS-ENTERPRISE and THE EVENING PRESS-ENTERPRISE, from its principal offices located in Riverside, California.

2. There was a criminal action before Respondent Court, entitled *People of the State of California v. Albert Greenwood Brown, Jr.*, Riverside Superior Court Case No. CR 1804. The action involved a complaint filed by the Riverside County District Attorney's Office seeking the imposition of the death penalty against the Defendant, arising out of the murder and rape in connection with the death of a teenage girl.

3. On October 19, 1981, prior to the commencement of jury selection, an oral and written motion was made by Petitioner to allow the public access to the *voir dire* examination of prospective jurors. After argument, however, the court, through the Honorable J. William Mortland, Judge Presiding, denied Petitioner's motion to keep the *voir dire* examination open to the public.

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[1]The petition was in *Press-Enterprise Company v. Superior Court of California, County of San Diego*, Case No. 811022, the trial court closed the entire *voir dire* proceedings and the appellate court ordered the transcripts to be released at the end of the jury selection. Although the petition was denied, Justices O'Connor, Marshall and Brennan voted to hear the case.

4. On December 30, 1981, after the empanelment of the jury but before the calling of the first witness, Petitioner again made an oral and written motion directed to Respondent Court, requesting that a complete transcript of the *voir dire* proceedings be released to the public.

5. In oral argument on that date, counsel for both Defendant BROWN and the People of the State of California, argued that there was some type of implied agreement between the court and the jurors assuring the latter of the permanent confidentiality of the *voir dire* examination.

6. Respondent Court denied Petitioner's motion and stated in its December 30, 1981 ruling:

> "The right of privacy should prevail and the right to a fair trial should prevail and the right of the people to know, I think, should have limitations and, so, at this stage, the motion to open up anything that has been ordered sealed, including, again, the individual sequestered voir dire proceeding is denied without prejudice."

7. On or about February 23, 1982, after ALBERT BROWN had been convicted and sentenced to death, Petitioner made an oral and written *ex parte* application for release of the transcripts of the *voir dire* proceedings before Respondent Court.

8. Respondent Court, after considering application of the Petitioner for release of the transcripts of the *voir dire* proceedings, denied the application.

9. After Respondent Court's ruling, this Petitioner sought relief in the Court of Appeal, Fourth Appellate District, Division Two, through a petition for writ of mandate to compel the Respondent Court to vacate its Order and release the transcripts to the public, and order that Respondent Court vacate its Order denying Petitioner's request to be present during the *voir dire* proceedings.

10. The Appellate Court, through the Honorable J. Douglas McDaniel, Acting Presiding Justice, summarily denied Petitioner's request, without articulation.

11. Immediately following the Court of Appeal Order, Petitioner sought a hearing with the Supreme Court of the State of California. On June 30, 1982, the Supreme Court of the State of California denied Petitioner's request for a hearing.[2]

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[2]The Order entered by the California Supreme Court on June 30, 1982, indicated that Chief Justice Rose Bird, the author of the original opinion, requested that the matter be given a hearing.

REASONS FOR GRANTING THE WRIT.

I.

The Public Has a Constitutional Right to Attend Criminal Trials.

The First Amendment of the United States Constitution provides for the right of free speech and right of free press.

This Court, in *Richmond Newspapers, Inc. v. Virginia,* (1980) 448 U.S. 555; 65 L.Ed.2d 973; 100 S.Ct. 2814, interpreted this important right as it related to criminal trials:

> "We hold the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, the important aspects of freedom of speech and 'the press could be eviscerated'."

The above, coupled with another of this Court's decisions, *Gannett Company, Inc. v. DePasquale,* (1979) 443 U.S. 368; 61 L.Ed.2d 608; 99 S.Ct. 2898, has established that there is an independent public interest in the Sixth Amendment guarantee of a public trial, which is protected implicitly by the First Amendment.

Therefore, it is clear that the public has a constitutional right to attend criminal trials.

II.

The Voir Dire Proceeding Is an Integral Portion of the Trial Process.

The *voir dire* examination of prospective jurors has been considered a public and integral part of the complete trial process (as cited in the opinion of Justice Blackman in *Gannett Company, Inc. v. DePasquale,* (1979) 443 U.S. 368; 61 L.Ed.2d 608; 432 N. 12; 99 S.Ct. 2898; and the Arkansas case of *Commercial Printing Company v. Lee,* (1977) 262 Ark. 87; 553 S.W.2d 270.

California case law states that the jury selection is an integral part of a "public trial". In the case of *People v. Teitelbaum*, (1958) 163 Cal.App.2d 184; 329 P.2d 157, the court stated:

> "The trial of the action, so far as the term 'public trial' is concerned, consists of the proceedings for *the impanelment of the jury* and the opening statements of counsel, the presentation of evidence, the arguments, the instructions to the jury and return of the verdict . . ." (Emphasis added)
>
> *People v. Teitelbaum*, 163 Cal.App.2d at 206, 207; 329 P.2d 172.

During the *voir dire* examination the trier of fact is selected. A trial obviously cannot be called a "public" trial when this important function is done in private. The judicial process would be subject to suspicion and doubts cast on its ability to function as the disciplinary arm of society if the trier of fact is chosen in secret.

In recognizing the importance of an open and public trial, this Court, in its recent *Richmond Newspapers* case, quoted J. Bentham, Rationale of Judicial Evidence, 524 (1827):

> "Without publicity, all other checks are insufficient: in comparison of publicity, all of other checks are of small count. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance." 448 U.S. at 569; 65 L.Ed.2d at 985; 100 S.Ct. 2824.

In the instant case, the lower court not only closed the *voir dire* proceedings to the public, but thereafter sealed the transcripts permanently. Thus, an integral portion of the trial process was conducted entirely in secret. Allowing the trier of fact to be selected behind closed doors not only

violates Petitioner's constitutional rights, but also endangers the entire judicial process by casting suspicion and doubt on its ability to function as a disciplinary arm of society.

III.

The California Supreme Court *Hovey* Decision as Applied by the Lower Courts Has Deprived the Public of Its Constitutional Right to Attend Criminal Trials.

This Court's decision in *Richmond Newspapers, Inc. v. Virginia*, (1980) 448 U.S. 555; 65 L.Ed.2d 973; 100 S.Ct. 2814, held that the right to attend criminal trials is implicit in the guarantees of the First Amendment.

In *Near v. The State of Minnesota*, (1931) 283 U.S. 697; 75 L.Ed. 1357; 51 S.Ct. 625, this Court reaffirmed that the liberties guaranteed under the First Amendment were protected under the Fourteenth Amendment as follows:

> "It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by the state action."
>
> *Near v. The State of Minnesota*, 283 U.S. at 707; 75 L.Ed. at 1363; 51 S.Ct. at 628.

It has also been held that the judicial branch of the state is also subject to the same limitations of the due process clause of the Fourteenth Amendment as the executive and legislative branches of the states. *Bouie v. City of Columbia*, (1964) 378 U.S. 347, 353-354; 12 L.Ed.2d 894; 84 S.Ct. 1697.

In balancing the various public and private interests involved, the freedoms of the First Amendment (as incorporated by the Fourteenth) must be given a preferred position. *Marsh v. Alabama*, (1946) 326 U.S. 501, 90 L.Ed.

265, 66 S.Ct. 276; *New York Times v. United States*, (1971) 403 U.S. 713; 29 L.Ed.2d 822; 91 S.Ct. 2140.

This Court, in *Richmond Newspapers*, held as follows:

> "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public."
>
> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. at 581; 65 L.Ed.2d at 992; 100 S.Ct. at 2830.

The California Supreme Court decision in *Hovey v. Superior Court*, (1980) 28 Cal.3d 1; 168 Cal.Rptr. 128; 616 P.2d 1301 and its application by the lower courts in the instant action have deprived Petitioner and the public in general of their common law and constitutional rights to attend criminal trials. In doing so, California courts have failed to show an overriding interest which necessitates or justifies interference with these First Amendment rights.

Chief Justice Rose Bird of the California Supreme Court ruled as follows in *Hovey*:

> "In order to minimize potentially prejudicial effects identified by the Haney study, this court declares, pursuant to its supervisory authority over California criminal procedure, that in future capital cases that portion of the voir dire of each prospective juror which deals with issues which involve death-qualifying the jury should be done *individually and in sequestration*." (Emphasis added)
>
> *Hovey v. Superior Court*, 28 Cal.3d 80; 168 Cal.Rptr. at 181; 616 P.2d at p. 1354.

It should be noted that the basis for the *Hovey* decision is not a study involving the potential influences or bias of the public on prospective jurors. The Haney study referred to a single survey which polled only 67 persons who had viewed a simulated video-taped *voir dire* proceeding. The conclusion was reached that prospective jurors were influ-

enced by the amount of time spent on death-qualifying *voir dire* proceedings, as well as the obvious effect of fellow prospective jurors being disqualified because they could not believe in the death penalty as an appropriate punishment. There is no mention in the Haney study of any influence the presence of the public might have during the *voir dire* proceedings, nor does the *Hovey* decision say explicitly that there is any.

Moreover, the decision in the *Hovey* case also provides as follows:

> "This rule will not in any way affect the open nature of the trial. Although trial counsel and the court may pose general questions to the panel, venire persons shall not respond to any questions beyond those routinely asked in any criminal trial until they are *outside the presence of their fellow venire persons*." (Emphasis added)
>
> *Hovey v. Superior Court*, 28 Cal.3d 80-81; 168 Cal.Rptr. at 181; 616 P.2d at 1354.

While it is clear that the rights of the accused must be protected in capital cases, the protections afforded, especially to the exclusion of the constitutional rights of others, must have a firm and reasonable basis. The complete opinion of *Hovey* lacks that basis for the exclusion of the public during the *voir dire* proceedings.

IV.

The *Hovey* Decision Is an Unconstitutional Prior Restraint on the Exercise of First Amendment Rights.

As previously cited, the California Supreme Court pursuant to "its supervisory authority over California criminal procedure," mandated that the *voir dire* proceedings on death-qualifying issues be done individually and in seques-

tration. *Hovey v. Superior Court*, (1980) 28 Cal.3d 80; 168 Cal.Rptr. 128; 616 P.2d 1301.

It has long been recognized that the First Amendment guarantees of speech and press necessarily include the right to receive information. This Court, in *Richmond Newspapers* stated as follows:

> "The explicit guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily."
>
> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 576, 577; 65 L.Ed.2d p. 989; 100 S.Ct. p. 282.

In the instant case, the mandate contained in the *Hovey* decision amounts to a prior restraint on the exercise of Petitioner's First Amendment rights. Not only was Petitioner denied its right to attend criminal trials to hear, see and communicate observations concerning the *voir dire* proceeding, but further was denied access to the transcripts of these proceedings. It is clear that by denying the press an ability to seek out the news, the freedom of the press has been eroded.

Further, by keeping these proceedings beyond the public eye, the *Hovey* decision and the lower court in this instant action have effectively restrained the exercise of the public's First Amendment right to free speech.

This Court, in *Nebraska Press Association, et al. v. Hugh Stewart*, (1976) 427 U.S. 539; 49 L.Ed.2d 683; 96 S.Ct. 2791, stated:

> "The First Amendment provides that 'Congress shall make no law . . . abridging the freedom . . . of the press,' and it is 'no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.' *Near v.*

> *Minnesota ex rel. Olson*, 283 U.S. 697, 707; 75 L.Ed. 1357; 51 S.Ct. 625 (1931). . . . The court has interpreted these guarantees to afford special protection against orders that prohibit the publication or broadcast of particular information or commentary — orders that impose a 'previous' or 'prior' restraint on speech. None of our decided cases on prior restraint involve restrictive orders entered to protect a defendant's right to a fair and impartial jury, but the opinions on prior restraint have a common thread relevant to this case."
>
> *Nebraska Press Association v. Hugh Stewart*, 427 U.S. at 556; 49 L.Ed.2d at 695-696; 96 S.Ct. at 2801.

This Court concluded that the theme in all of the cases dealing with these rights was the dissatisfaction with prior restraints:

> "The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative.
>
> "A prior restraint, by contrast and by definition has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for a time."
>
> *Nebraska Press Association v. Hugh Stewart*, 427 U.S. at 559; 49 L.Ed.2d at 697-698; 96 S.Ct. at 2803.

It is clear that a prior restraint on the exercise of the freedom of speech or freedom of press is presumed to be unconstitutional. Prior restraints will not stand unless it is shown that there are no less stringent alternatives available. *Nebraska Press Association v. Hugh Stewart*, 427 U.S. at 563-564; 49 L.Ed.2d at 700; 96 S.Ct. at 2805.

A complete examination of the *Hovey* decision reveals that there is no discussion of possible alternatives less restrictive on the public's right to attend a trial. Less stringent alternatives such as those offered in the *Nebraska Press Association* case were not considered.[3]

The *Hovey* decision, through its application and expansion by the lower courts, has established a prior restraint to access and reporting of the *voir dire* proceedings in capital cases. In doing so, the California Supreme Court and the lower courts have failed to rebut the presumption that such a prior restraint is unconstitutional.

V.

The Mandate in *Hovey* Is Unconstitutionally Vague and Overbroad.

It is a well settled principle of law that statutes must be narrowly drawn to afford citizens a sufficiently definite warning as to the proscribed conduct when measured by the common understanding of men of common intelligence, *Jordan v. DeGeorge*, (1951) 341 U.S. 223; 95 L.Ed. 886; 71 S.Ct. at 703.

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[3]Alternatives suggested in *Nebraska Press Association*, 427 U.S. 539, were: (1) change of venue; (2) postponement of the trial to allow public attention to subside; (3) questioning prospective jurors to screen those with fixed opinion as to guilt or innocence; (4) the use of emphatic and clear instructions on the sworn duty of each juror to decide only on evidence presented in open court; (5) sequestration of jurors, *Nebraska Press Association v. Hugh Stewart*, 427 U.S. at 563, 564; 49 L.Ed.2d at 700; 96 S.Ct. at 2805.

In the instant case, the California Supreme Court has failed to adequately define the term "sequestration" as it refers to Petitioner's important First Amendment rights.

The mandate of the California Supreme Court in *Hovey*, closing the *voir dire* proceedings on death-qualifying issues, is subject to the same scrutiny as legislative enactments. This Court stated in *NAACP v. Button*, (1963) 371 U.S. 415; 9 L.Ed.2d 405; 83 S.Ct. 328:

> "The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchannelled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."
>
> *NAACP v. Button*, 371 U.S. at p. 433; 9 L.Ed.2d at p. 418; 83 S.Ct. at p. 338.

While the *Hovey* decision does not expressly state that members of the public in general and members of the press in particular shall be excluded during the jury selection proceedings, certain lower courts in so construing the mandate of the California Supreme Court have prohibited the public and the press from attending the *voir dire* proceedings.

It must be remembered that the rationale of the *Hovey* decision was that prospective jurors were influenced by the amount of time spent on death-qualifying *voir dire* proceedings and were affected by observing fellow prospective jurors being disqualified because of their moral opposition to the death penalty as an appropriate punishment. There is no mention in the *Hovey* decision of any influence the public may or may not have on the venire persons during this part of the *voir dire* proceedings.

The California Supreme Court, by not carefully defining the procedure lower courts are to utilize in complying with this mandate, has impliedly authorized lower courts to exclude the public.

It is respectfully submitted to this Court that a mandate from any judicial body should be reviewed on an even higher standard than that regularly applied to statutes. This is especially true when constitutional rights are at issue. A rule of law created by the judicial branch is without the input that citizens ordinarily have through the legislative process. Attendance at a judicial proceeding, including the appellate process, is usually limited to the parties involved.

When a decision of the judicial branch is unclear and has failed to state specifically what type of conduct is prohibited, then such a mandate is unconstitutionally overbroad.

VI.

The Lower Courts, Without Statutory or Case Authority, Have Wrongfully Sealed the Transcripts of the Jury Selection.

The lower court's original order sealing the transcript, and subsequently the tacit approval accorded by the Court of Appeal and the California Supreme Court, have clearly violated Petitioner's constitutional rights.

Reviewing a transcript of a proceeding is at best a poor substitute for actual observation at the hearing. However, it at least allows some information to be dispersed to the public. As stated earlier, the ability to gather information is essential to the full exercise of freedom of the press and vital to its societal functions.

Although California's statutory and case law set certain limitations on *voir dire* examination, none of the limitations exclude the public's access to the jury selection process, either by way of physical exclusion or by sealing of the

transcripts. Sealing the transcript was clearly unauthorized, and nothing in *Hovey* can be found to justify it in the instant case.

Nor can the lower court's order be justified by the fact that both counsel for the defense and for the State opposed release of the transcripts. As this Court made clear in *Gannett Co., Inc. v. DePasquale*, (1979) 443 U.S. 368; 61 L.Ed.2d 608; 99 S.Ct. 2898, while the Sixth Amendment guarantees the accused the right to a public trial, it does not offer the right to a private trial. Further, inherent in any agreement of the parties to an action to deny Petitioner its constitutional right to attend trials is the risk of a veil being placed over what has traditionally been a public forum.

VII.

The *Hovey* Decision Has Not Received Uniform Application in the State of California.

Since February 22, 1982, the date our previous petition was denied, California trial courts have continued to apply the *Hovey* mandate, but have failed to implement the same procedure in all capital cases. In Riverside County, California, a relatively small jurisdiction where the instant case originated, the *Hovey* mandate has, in just the last year, received at least six (6) different interpretations, largely because of the State Supreme Court's failure to define sequestration in that decision.

In some cases, such as the instant case, judges have not only denied petitioners access to the entire *voir dire* proceeding, but have also permanently sealed the transcript of these proceedings. In other cases, part of all of the *voir dire* process was closed to the public, but transcripts were made available. In still other cases, the court closed the *voir dire* process to the public, but allowed press representatives to attend. Finally, some trial court judges have interpreted the

Hovey mandate more liberally to require that jurors be questioned individually during the death-qualifying phase outside the presence of other venire persons, and therefore have left the jury selection process open to the press and public.

The problem resulting from the *Hovey* mandate is not confined to one county. An informal survey conducted by counsel for Petitioner shows that in Orange County and Los Angeles County, the death-qualifying phase in each capital case is automatically closed to the public and the press.

It is clear that the absence of direction and clarity in the *Hovey* decision threatens Petitioner and the public's First Amendment rights in all capital cases. Further, the lack of uniform application of the *Hovey* mandate throughout the State of California is further evidence that exclusion of public and press during the *voir dire* process is unwarranted.

Conclusion.

The issue of a court's ability to close the *voir dire* proceeding to the public and the press has been presented to this Court previously. Allowing the *Hovey* decision to stand without review by any court has in effect authorized trial courts to infringe on the public and Petitioner's constitutional rights as guaranteed by the First Amendment, without justification.

Restraint on the exercise of these First Amendment rights has not been shown to be necessary to further any compelling interest. Nor have the California courts shown that less stringent alternatives are not available. Further, the lower court's action in this instant case, expanding the *Hovey* decision to include sealing the transcripts, creates a dangerous precedent and incalculable risk for future closures of not only *voir dire* proceedings, but other parts of the criminal trial, and by no means limited to capital cases.

As this Court recognized in its *Richmond Newspapers* decision, the public's right to attend a criminal trial is not only an essential ingredient in the First Amendment guarantees of freedom of speech and freedom of press, but also is vital to our concept of an open and democratic society.

Imposition of a death penalty is undoubtedly a continuing controversial issue. In order to obtain a full discussion by the public on this issue, it is essential the public has access to all of the information available relating to the death penalty and its imposition. This information necessarily includes the specifics of the jury selection in any particular capital offense case.

Petitioner is hopeful that review by this Court will clarify the rights of the public to attend criminal trials, specifically the *voir dire* proceeding, not only in capital cases, but all cases in which sensitive areas of *voir dire* examination may arise.

Therefore, it is respectfully prayed that this Court grant a writ of certiorari, reverse the decisions below, and grant a hearing to consider the rights of the public to attend and observe the trial process.

Respectfully submitted,

THOMPSON & COLEGATE,
By JAMES D. WARD,
Attorneys for Petitioner,
Press-Enterprise Company.

APPENDIX.

Court of Appeal, State of California, Fourth Appellate District, Division Two.

Press-Enterprise Company, Petitioner, vs. Superior Court, Riverside County, Respondent, 4 Civil No. 27904, County No. Cr. 18104.

Filed: May 13, 1982.

THE COURT: The petition for writ of mandate is DENIED.

McDaniel, *J.*
Acting Presiding Justice

CC:

County Clerk, Riverside County, 4050 Main St., Riverside 92501

Thompson & Colegate, J. D. Ward, J. A. Boyd, P.O. Box 1299, Riverside 92502

Dist. Atty., Riverside County, R. Spitzer, Dep., Drawer 1148, Riverside 92501

Swarner, Finn & Barnett, 4075 Main St., Ste. 101, Riverside 92501

Joseph P. Myers, 4048 10th St., Riverside 92501

Co. Counsel, J. E. Reikes, Dep., 3535 10th St., Ste. 300, Riverside 92501

Press Enterprise Co., 3512 14th St., Riverside 92501

Gray, Cary, Ames & Frye, 2100 Union Bank Bldg., S.D. 92101.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

June 30, 1982

I have this day filed Order

HEARING DENIED.

In re: 4 Civil No. 27904, PRESS-ENTERPRISE CO. *vs.* SUPERIOR COURT, RIVERSIDE.

Respectfully,
Clerk

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